not liable until damage had been suffered by the compulsory payment of the note or execution thereon; however, the Court held that the breach of contract was complete and awarded as damages the full amount of the note. *Kohler* v. *Matiage*, 72 N. Y. 259; *Redfield* v. *Haight*, 27 Conn. 31. Mere insolvency of the maker does not necessarily render a note valueless. It was objected that the plaintiff might collect the judgment from the defendant and then not pay the note; but the Court said this danger might be averted by equitable counter-claim and cited with approval *Loosemore* v. *Radford*, 9 M. & W. 659, and *Johnson* v. *Britton*, 23 Ind. 105.

CRIMINAL LAW—EVIDENCE—COMPETENCY OF DIVORCED WIFE TO TESTIFY AGAINST HUSBAND.—STATE V. KODAT, 59 S. W. 73 (Mo.).—The defendant was indicted for a criminal assault upon a third person. Between the time of the assault and the trial the defendant's wife had obtained a divorce. At the trial the divorced wife testified against the defendant. *Held*, that such evidence was incompetent.

This decision seems at variance with the prevailing tendency of modern decisions. At common law, a husband or wife could not, with few exceptions, testify against the other in any legal proceedings. This being the case, the severance of the marriage relation would not remove the disqualification, and it was upon this ground that the decision was based. *State* v. *Raby*, 28 S. E. 490 (N. C.); *State* v. *Phelps*, 2 Fyler 374. The disqualification, however, now is generally restricted to confidential communications. The important consideration is the public convenience of getting at the truth in all cases. *Appeal of Robb*, 98 Pa. St. 501; *Westerman* v. *Westerman*, 25 Ohio St. 500; *Shouler*, *Husband and Wife*, 85.

DIFFERENCE BETWEEN CONDITIONS AND TERMS OF A WRITTEN INSTRUMENT—PAROL EVIDENCE AS TO EACH.—GALE MFG. CO. V. FINKELSTEIN, 59 S. W. 571 (Tex.).—The defendant gave the plaintiff's agent an unambiguous order for goods, in writing. Defendant offered evidence of a parol contemporaneous agreement, that the order should be sent by the agent to the plaintiff, and if not accepted and the defendant notified within thirty days, it was to be considered cancelled. The trial court admitted the parol evidence, over the defendant's objection, but the appellate court *held*, it was error to admit it as varying the terms of a writing by parol.

The appellate court fails to consider the distinction between the *conditions* and the *terms* of a written instrument. The condition on which an instrument is to become binding may always be shown by parol. In *McFarland* v. *Sikes*, 7 Atl. 408, the Supreme Court of Connecticut held parol evidence admissible to show that the condition of a promissory note was that defendant should appear before a grand juror on a certain day. The note was absolute on its face. The Court held that the defendant's appearanee was not a term of the contract, but a condition. So here, the ratification and notice to defendant was a condition, the performance of which gave the contract life, the nonperformance of which in thirty days rendered it a nullity. This rule and the distinction is recognized in *Benton* v. *Martin*, 52 N. Y. 570; *Watson* v. *Bowers*, 119 Mass. 383; *Sweet* v. *Stevens*, 1 R. I. 375; *Schindler* v. *Mulheiser*, 45 Ct. 153; *Westman* v. *Krinnweide*, 15 N. W. 255; and others.

DIVORCE—ALIMONY—FOREIGN JUDGMENTS—RES JUDICATA.—ARRINGTON V. ARRINGTON, 37 S. E. 212 (N. C.).—*Held*, under Federal Constitution (Art. 4, Sec. 1), declaring that full faith and credit shall be given in each State to the judicial proceedings of other States, a judgment for divorce, granting alimony, is *res judicata* and binding on the parties, and, when sued on, defendant cannot plead to the merits in the original action.

That alimony in a lump sum or past due is such matter of record as to come under this article of the Constitution is well established. It is stated that alimony, future as well as past, is such a matter of record, in *Barber* v. *Barber*, 21 How. 582, 16 L. Ed. 226, but, *contra*, *Lynde* v. *Lynde*, 162 N. Y. 405, 56 N. E. 979, 48 L. R. A. 679, holds that a decree for payment of alimony in the future lacks the conclusiveness to bring it under the Federal Constitution.

ELECTIONS—CITIZENSHIP—TREATY WITH SPAIN—CITIZEN OF PORTO RICO—REMOVAL TO UNITED STATES—RIGHT TO VOTE.—PEOPLE EX REL JUARBE V. BOARD OF INSPECTORS OF TWENTY-FOURTH ELECTION DISTRICT OF TWENTY-FIFTH ASSEMBLY DISTRICT OF BOROUGH OF MANHATTAN, 67 N. Y. Supp. 236. —The laws of New York require that a person, in order to be entitled to vote at a State election, must be a male citizen of the United States. The Constitution of the United States (Art. 14, Sec. 1) declares that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States. The treaty of peace with Spain (Art. 9) provides that the civil rights and political status of the native inhabitants of the territory ceded by Spain to the United States shall be determined by Congress. *Held*, that relator, who was a native-born citizen of Porto Rico, and resided there until September, 1899, when he moved to the United States, and who had never been naturalized, was not a citizen of the United States within the meaning of the Federal Constitution, and hence not entitled to register as a voter.

Juarbe had renounced allegiance to Spain and "adopted the nationality of the United States," serving with the army of occupation in Porto Rico during the Spanish war. But he must also show that the United States adopted him as a full-fledged citizen, and this could only be, in this case, by a collective naturalization of the Porto Ricans. The right claimed by the relator depends upon express proof that the right of full citizenship was conferred, and it cannot be upheld on the broad claim that the Constitution follows the flag, or that in the United States there can be no subjects. The trial judge notes a difference between the case where life, liberty or property is sought to be taken away without due process of law, as required by the fundamental law of the land, and the case in bar, which rests merely upon a claim of privilege—which privilege has not been conferred as yet, as Congress has not acted.

INDICTMENT FOR PERJURY BY WHICH JUDGMENT OF ACQUITTAL WAS SECURED—RES ADJUDICATA—ANALOGY TO JUDGMENT SECURED BY FRAUD—COOPER V. COMMONWEALTH, 59 S. W. 574. For majority opinion, 51 S. W. 789 (Ky.). Cooper was acquitted of a charge of adultery. *Held*, that the judgment on the case was conclusive in his favor on a subsequent charge of perjury, alleging that he falsely and knowingly did swear that he had not carnal knowledge of the woman.

The decision is on the ground that the same facts were in issue between the same parties and the first judgment disposed of them. While the jury must have believed that he committed adultery to convict, yet the questions are not the same. The question in the latter case was, did he commit perjury, and the evidence was overwhelming that he did. While the judgment in the former case is a bar to a subsequent prosecution for adultery, it ought not to be for perjury. The second jury had evidence the first did not have, and should have been allowed to weigh it. No pretense is made that if the first judgment had been procured by fraud it would have been a bar. 5 *Greenl. Ev.*, Sec. 38; 1 *Whart. Cr. Law*, Sec. 546; 1 *Chitty Cr. Law*, 657. Why should it be when secured by a means infinitely more vicious; a means which aims a blow at the security of all justice. The authorities cited to support this decision are cases